

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KELLY C. PIERRE,

Petitioner

v.

WARDEN DURAN, *et al.*,

Respondents

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CIVIL NO. 4:CV-08-1458

(Judge Jones)

MEMORANDUM

August 27, 2008

Kelly C. Pierre, an inmate presently confined at the Clinton County Correctional Facility, McElhattan, Pennsylvania, filed this *pro se* Petition for Writ of Habeas Corpus ("Petition") pursuant to the provisions of 28 U.S.C. § 2241. Named as Respondents are the Warden of the Clinton County Correctional Facility and United States Immigration and Customs Enforcement ("ICE") Office. For the reasons set forth below, the Petition will be dismissed as premature.

I. BACKGROUND

On August 22, 2006, Pierre was convicted in the United States District Court for the Southern District of New York for the offense of conspiracy to commit mail

and wire fraud under 18 U.S.C. § 371. (Doc. 2-2 at 5.) Pierre was sentenced to a forty-six (46) month term of imprisonment. (*Id.*)

On January 12, 2007, a Notice of Intent to Issue a Final Administrative Removal Order was served on Pierre at the Allenwood Federal Correctional Institution ("FCI-Allenwood"). (*See* Doc. 2-2 at 3.) The Notice informed Pierre that the INS had determined that he was amenable to expedited administrative removal proceedings pursuant to section 238(b) of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1228(b). (*See id.*) The determination was based upon the allegations that Pierre is not a citizen or national of the United States; he is a native of Trinidad and Tobago and a citizen of Venezuela; he entered the United States on June 18, 1971 as a G-1 non-immigrant; he is not lawfully admitted for permanent residence; and he was convicted of an aggravated felony. (*See id.* at 3, 5.) On May 31, 2007, a Final Administrative Removal Order was served on Pierre ordering that he be removed from the United States to Trinidad and Tobago or Venezuela. (*See id.* at 6.)

In the instant Petition, Pierre avers that he has been in ICE custody at the Clinton County Correctional Facility since July 18, 2008. (*See* Doc. 2-1 at 2.) On

that date, Pierre was released from the custody of the Federal Bureau of Prisons (“BOP”).¹

Pierre raises the following issues in the Petition: 1) he is being held illegally at the Clinton County Correctional Facility because there is no court order directing that he be confined for the violation of any law; 2) he entered the United States through legal means and therefore, the order directing his removal is defective; 3) he was deprived of an administrative or judicial removal proceeding; and 4) his right to procedural due process was violated when an ICE agent refused his request for judicial review of his removal order. (*See* Doc. 1 at 8-11.) He requests a stay of removal proceedings so that he may voluntarily depart the United States. (*See id.* at 9.)

II. DISCUSSION

Habeas corpus petitions brought under § 2241 are subject to summary dismissal pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254 (1977) (applicable to § 2241 petitions under Rule 1(b)). *See, e.g., Patton v. Fenton*, 491 F. Supp. 156, 158-59 (M.D. Pa. 1979). Rule 4 provides in pertinent part: “If it plainly appears from the

¹The Court accessed the Inmate Locator feature on the Federal Bureau of Prisons website and confirmed that Pierre was released from BOP custody on July 18, 2008.

face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.” A petition may be dismissed without review of an answer “when the petition is frivolous, or obviously lacking in merit, or where . . . the necessary facts can be determined from the petition itself” *Allen v. Perini*, 424 F.2d 134, 141 (6th Cir. 1970), *cert. denied*, 400 U.S. 906 (1970). *Accord Love v. Butler*, 952 F.2d 10, 15 (1st Cir. 1991). District courts have “a duty to screen out a habeas corpus petition which should be dismissed for lack of merit on its face.” *Allen* 424 F.2d at 141.

It initially is noted that, if Pierre wishes to challenge the legality of his removal proceedings, he must initiate an action in the appropriate Court of Appeals. The REAL ID Act, Pub. L. No. 109-13, 119 Stat. 231, provides that the exclusive remedy for challenging an order of removal is a petition for review filed with “the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.” 8 U.S.C. § 1252(b)(2); *see also id.* § 1252(a)(5); *Jordon v. Attorney Gen.*, 424 F.3d 320, 326 (3d Cir. 2005).

However, this Court has jurisdiction over the Petition to the extent that it seeks Pierre’s immediate release on bond pending removal. Detention, release, and removal of aliens ordered removed is governed by the provisions of 8 U.S.C. § 1231. Under

§ 1231(a), the Attorney General has 90-days to remove an alien from the United States after his order of removal, during which time detention is mandatory. At the conclusion of the 90-day period, the alien may be held in continued detention, or may be released under continued supervision. 8 U.S.C. §§ 1231(a)(3) & (6). Section 1231(a)(1)(B) provides when the 90-day period begins to run, as follows:

The removal period begins on the latest of the following:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if the court orders a stay of the removal of the alien, the date of the court's final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

In the instant case, Pierre acknowledges that he completed service of his federal criminal sentence and was released from the custody of the BOP on July 18, 2008. (*See* Doc. 2-1 at 2.) Thus, pursuant to § 1231(a)(1)(B)(iii), the 90-day removal period began to run as of that date. *See Vasquez v. ICE*, 160 Fed. Appx. 199, 201 (3d Cir. 2005). Pierre clearly is subject to the 90-day post-removal order period of

mandatory detention.² Because Pierre's 90-day period of mandatory detention has not yet expired, his present Petition is premature and will be dismissed without prejudice.

An appropriate Order shall issue.

² Immediately following the expiration of the ninety (90) day removal period, ICE's field office director having jurisdiction over the alien shall initiate an initial custody determination as to whether the detainee should be released.